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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING ADDITIONAL MOTIONS FOR EXEMPTION ELIGIBILITY**

I. Summary

This ruling grants the motions of City and County of San Francisco (CCSF) and the Port of Stockton (Port), seeking a ruling on eligibility for exemption from the "Cost Responsibility Surcharge" (CRS) that is otherwise applicable to Municipal Departing Load (MDL) customers. The motions were filed March 16, 2006, pursuant to the process authorized in Decision (D.) 06-03-004 for publicly-owned utilities (POUs)¹ to be added to the list that is eligible to apply for exemption from the MDL CRS on behalf of their customers.

For customers of a POU to qualify for the CRS exemption, the POU had to be providing electricity to at least 100 retail end use customers as of July 10, 2003. In D.04-11-014, the Commission established an initial list of POUs meeting the

¹ The term "publicly-owned utility" refers to entities as defined in Pub. Util. Code § 9604(d).

criteria for the CRS exemption, but recognized that additional POU's may also meet those criteria.

Pursuant to D.06-03-004, additional POU's seeking to be placed on the exemption eligibility list were directed to file a motion, with a sworn affidavit from a responsible officer or employee of the company, attesting that the POU was serving at least 100-retail customers as of July 10, 2003. A ruling was issued on April 21, 2006, granting some of the motions that had been filed, but deferring a ruling on the motions of CCSF and the Port of Stockton. Based on subsequent inquiry, it is concluded that CCSF and the Port of Stockton have provided satisfactory confirmation of exemption eligibility. Their motions are thus granted, as discussed below.

II. Port of Stockton

A. Parties' Positions

The Port filed a motion seeking exemption eligibility, supported by the affidavit of Jeff Kaspar, Deputy Port Director of Properties and Environmental. Kaspar affirmed that the Port had owned and operated a 12 kV electric distribution system since July 2000, and was serving at least 100 retail customers on July 10, 2003.

PG&E filed a response, arguing that the Port had not complied with D.06-03-004. PG&E argued that the Port's affidavit used different language from that set forth in D.06-03-004 concerning eligibility criteria. PG&E interpreted the language in the Port's affidavit as allowing for the possibility that some of the 100 customers referenced therein were not receiving retail electric service, but other sorts of services, from the Port.

According to PG&E, based on descriptions in the Port's website, much of Rough and Ready Island (where the Port's electric distribution system is located)

was “open land” and “mostly undeveloped” in the 2002-2003 timeframe. PG&E questioned the Port’s claims, and requested that the Energy Division audit Port of Stockton’s records to confirm that it meets the criteria for CRS exemption eligibility.

The Port filed a reply on March 17, 2006, arguing that its affidavit complied with D.06-03-004, confirming that the 100 customers referenced therein did, in fact, receive retail electric service from the Port as of July 10, 2003. Nonetheless, the Port attached a supplemental affidavit to provide clarifying language affirming this fact.

The Port denied PG&E’s claims concerning the lack of customers on Rough and Ready Island, but asserted that while much of the 1,400-acre island is undeveloped, approximately 500 acres are developed with 40 large warehouses and employing 1,500 people.

B. Discussion

By ruling dated April 21, 2006, it was concluded that further information was needed as a basis to rule upon whether the Port meets the criteria for CRS exemption eligibility. A ruling on whether to grant the Port’s Motion for exemption eligibility status was deferred pending further inquiry by the Energy Division. The Energy Division has now completed its further inquiry concerning the basis for the Port’s claims. Based on the Energy Division’s further inquiry, a reasonable basis has been established to support the Port’s claim that it was serving at least 100 retail customers as of July 10, 2003. Accordingly, its motion is granted.

III. City and County of San Francisco

A. Parties' Positions

The City and County of San Francisco (CCSF) filed a motion seeking CRS exemption eligibility, and attached the affidavit of Barbara Hale, Assistant General Manager of Power. Hale affirms that CCSF, through the Power Enterprise of the SF Public Utilities Commission, "served well over 100 customers in or around San Francisco" pursuant to "an interconnection agreement with PG&E." (CCSF affidavit, page 1.)

PG&E filed a response, questioning whether the Commission intended to extend CRS exemptions to the types of service that CCSF provides. PG&E indicated that it provides FERC-jurisdictional service to CCSF, which, in turn, bills other tenants, most city departments, for their electric usage. PG&E states that the type of electric service provided by CCSF "is distinguishable from direct access (DA) service, whereby PG&E provides CPUC-jurisdictional service to numerous end-use customers." PG&E requests that the Commission confirm that it intended the CRS exemptions to include the types of arrangements that CCSF provides.

The California Municipal Utilities Association (CMUA) filed a reply to PG&E's response, arguing that PG&E failed to explain why the type of service provided to CCSF is distinguishable from other scenarios involving wholesale distribution service to POU's. As noted by CMUA, DA service is not necessarily the only variation on the type of electric service that may be offered by a POU to qualify for CRS exemption eligibility under the 100-customer criterion.

B. Discussion

In the ruling dated April 21, 2006, it was concluded that further inquiry was needed as a basis to rule upon whether CCSF meets the requisite criteria for

exemption eligibility. A ruling on whether to grant CCSF's motion was deferred pending further inquiry by the Energy Division.

The Energy Division has completed its further inquiry concerning the basis for CCSF's claim. Based on the Energy Division's further inquiry, it is concluded that a reasonable basis has been established to support the claim that CCSF was serving at least 100 retail customers as of July 10, 2003. Accordingly, the CCSF motion is granted.

IT IS RULED that:

1. Based on the additional inquiry conducted by the Energy Division, a reasonable basis has been established to support the claims of CCSF and the Port of Stockton that they were each serving at least 100 retail customers as of July 10, 2003.

2. The motions of CCSF and the Port of Stockton, each filed pursuant to D.06-03-004, seeking to be placed on the CRS exemption eligibility list, are hereby granted.

Dated July 19, 2006 in San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

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(End of Appearances)